



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FAX (202-719-7049) and FIRST CLASS MAIL**

**NOV 16 2011**

Michael E. Toner, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

RE: MUR 6508  
Republican National Committee  
and Anthony W. Parker, in his  
official capacity as treasurer

Dear Mr. Toner:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting that your client, the Republican National Committee and Anthony W. Parker, in his official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). On April 12, 2011, your clients were notified that they were being referred to the Commission's Office of General Counsel for possible enforcement action under 2 U.S.C. § 437g. On November 1, 2011, the Commission found reason to believe that the Republican National Committee and Anthony W. Parker, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(8), a provision of the Act, and 11 C.F.R. §§ 104.3(d) and 104.11(b) of the Commission's regulations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(n)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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We look forward to your response.

On behalf of the Commission,



Cynthia L. Bauerly  
Chair

Enclosures  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR 6508**

**RESPONDENTS:**

**Republican National Committee and  
Anthony W. Parker, in his official  
capacity as treasurer**

**I. INTRODUCTION**

This matter originated with information ascertained by the Federal Election Commission ("the Commission") in the normal course of its supervisory responsibilities. See 2 U.S.C. § 437(g)(a)(1). For the reasons set forth below, the Commission found that there was reason to believe that the Republican National Committee and Anthony W. Parker, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11(b).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Summary**

The Committee failed to disclose newly incurred debts totaling \$9,323,930 on its original May-September 2010 monthly reports. See Referral. The Committee, in response to RAD's Requests for Additional Information ("RFAs") with respect to the May-September 2010 Monthly Reports, stated in part:<sup>1</sup>

"The additional debts listed on Line 10 of the Summary Page of our amended reports were discovered during a self-initiated internal review process, which was undertaken in connection with the arrival of a new Chief of Staff and Finance Director. The review included an evaluation of invoices received and paid by the Republican National Committee (RNC) to ensure the legitimacy of

<sup>1</sup> On July 30<sup>th</sup>, August 10<sup>th</sup>, November 3<sup>rd</sup>, November 12<sup>th</sup>, and December 14<sup>th</sup>, 2010, RAD sent RFAs to the Committee seeking clarification regarding the additional debts on its amended filings that were not disclosed on its original May-September monthly reports. The Committee, in response to the RFAs, submitted the same response to RAD on September 3<sup>rd</sup>, December 8<sup>th</sup>, December 15<sup>th</sup>, 2010 and January 18, 2011, respectively.

1 billings and accuracy of the RNC's reports to the FEC. As a result of these  
2 good-faith efforts, and in compliance with FEC reporting regulations, we  
3 amended our reports appropriately. These efforts have also resulted in new  
4 processes to prevent similar issues from arising in the future, and should any  
5 additional information be found to warrant further amended existing reports,  
6 we will do so accordingly."

7  
8 The charts below provide the relevant details of the Committee's original monthly  
9 report filings and the amended monthly report filings.<sup>2</sup>

10 **2010 May Monthly Reports**

	Original 2010 May Monthly Report received 5/20/10	Amended 2010 May Monthly Report, Received 7/20/10	
Amount Incurred This Period (Schedule D)	\$0.00	\$3,322,813.47	

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12 **2010 June Monthly Reports**

	Original 2010 June Monthly Report received 6/20/10	Amended 2010 June Monthly Report, Received 7/20/10	Amended 2010 June Monthly Report, Received 10/18/10	
Amount Incurred This Period (Schedule D)	\$760,141.03	\$2,135,039.39	\$3,055,522.71	

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16 **2010 July Monthly Reports**

	Original 2010 July Monthly Report received 7/20/10	Amended 2010 July Monthly Report, Received 10/18/10	Amended 2010 July Monthly Reports, Received 12/18/10 and 2/25/11	New Debt Reported on Original July Report but Removed from Amendment	
Amount Incurred This Period (Schedule D)	\$361,969.08	\$2,128,893.51	\$2,121,141.89	\$175.00	

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<sup>2</sup> As indicated, the Committee filed its initial amendments from 28 to 90 days after the newly incurred debt should have been originally reported.

**2010 August Monthly Reports**

	Original 2010 August Monthly Report received 8/30/10	Amended 2010 August Monthly Report, Received 10/18/10	Amended 2010 August Monthly Reports, Received 12/15/10 and 3/4/11	Actual Increase in New Debts Incurred
Amount Incurred This Period (Schedule D)	\$67,500.00	\$1,114,967.03	\$1,107,215.41	\$1,039,715.41

**2010 September Monthly Reports**

	Original 2010 September Monthly Report received 9/20/10	Amended 2010 September Monthly Reports, Received 10/18/10, 1/18/11, and 3/11/11	New Debts Reported on Original September Monthly Report but Removed From All Amendments	Actual Increase in New Debts Incurred
Amount Incurred This Period (Schedule D)	\$204,227.83	\$943,693.09	\$50,315.23	\$1,039,715.41

**1. Best Efforts Defense**

The Committee asserts that its corrective actions qualify for the treatment under the Commission's Best Efforts Policy Statement under which committees are not held liable if they undertook best efforts to ensure compliance prior to the violations. The Committee claims that it has satisfied the "best efforts" standards by taking the time to evaluate and determine the accuracy and legitimacy of purported debts owed by it prior to reporting any such debts to the Commission once it determined through its self-initiated review that such action was necessary. Response at 7-8. The Committee also states that its amendments included an additional 279 debt entries disclosed on Schedule D which represents a mere 0.4% of the 65,524 itemized transactions duly disclosed on its original May-September 2010 monthly reports. *Id.* at 8. The Committee states that the additional

debts, while seemingly large when viewed in isolation, purportedly represent only 2.2% of the Committee's total activity for the 2009-2010 election cycle.<sup>3</sup> *Id.*

**B. Legal Analysis**

The Federal Election Campaign Act of 1971, as amended ("The Act") provides that all national committees of a political party shall file monthly reports in all calendar years which shall be filed no later than the 20<sup>th</sup> day after the last day of the month and shall be complete as of the last day of the month. 2 U.S.C. § 434(a)(4)(B). The Act also provides that each report required to be filed by the treasurer of a political committee must contain the amount and nature of outstanding debts and obligations owed by or to such political committee. 2 U.S.C. § 434(b)(8); *see also* 11 C.F.R. § 104.3(d). Further, section 104.11(b) of the Commission's regulations states the following regarding when the debt information should be disclosed on an FEC report:

A debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred except that any obligation incurred for rent, salary, or other regularly reoccurring administrative expense, shall not be reported as a debt before the payment due date. See 11 C.F.R. § 116.6. If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the political committee shall either amend the report(s) containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined.

11 C.F.R. § 104.11(b).

<sup>3</sup> The Committee states that it calculated this debt increase figure by dividing the increase in debt by the total of the RNC's total receipts and disbursements for the 2009-2010 cycle. Response at 3, footnote 3. The cycle total was calculated using data on Column B of Lines 6(c) and 7 of the most recent amendments to its 2009 and 2010 Year End Reports. *Id.*

1 In addition, the Act provides that “when the treasurer of a political committee  
2 shows that best efforts have been used to obtain, maintain, and submit the information  
3 required by this Act for the political committee, any report or any records of such  
4 committee shall be considered in compliance with this Act . . . .” 2 U.S.C. § 432(i); and  
5 11 C.F.R. § 104.7(a). The Commission, in its Best Efforts Policy Statement, noted that it  
6 would consider the best efforts of a committee under 2 U.S.C. § 432(i) when reviewing  
7 all violations of recordkeeping and reporting requirements of the Act, whether arising in  
8 its traditional enforcement docket, audits, or the ADR program.<sup>4</sup> *See Statement of Policy*  
9 *Regarding Treasurers’ Best Efforts to Obtain, Maintain, and Submit Information as*  
10 *Required by the Federal Election Campaign Act*, 72 Fed. Reg. 31438, 31440 (June 7,  
11 2007) (“Best Efforts Policy Statement”).

12 **1. Best Efforts Defense**

13 While the focus of the Committee’s “best efforts” defense argument rests entirely  
14 on the steps taken during its “self-initiated internal review” to determine the accuracy of  
15 its newly incurred debt figures, the Response makes no mention of the efforts and actions  
16 employed by its treasurer, in particular, to ensure the timely disclosure of its newly  
17 incurred debts during the time of the original monthly report filings. The Commission  
18 specifically noted that it would take into consideration the following factors in  
19 determining whether the “best efforts” defense standards have been satisfied: 1) whether  
20 the committee at the time of its failure took relevant precautions to prevent a reporting  
21 failure; 2) whether the committee had trained staff responsible for obtaining, maintaining,

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<sup>4</sup> The Committee refers to *Lovely v. FEC*, 307 F. Supp.2d 294 (D. Mass. 2004) for the proposition that the Commission is required as a matter of law to consider whether the treasurer of a political committee used best efforts to file the political committee’s FEC reports in a timely manner. Response at 2-3.

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1 and submitting campaign finance information in the Act as well as the committee's  
2 procedures, recordkeeping systems, and filing systems; 3) whether the reporting failure  
3 was the result of unforeseen circumstances beyond the control of the committee; and  
4 4) whether, upon discovering the failure, the committee took all reasonable additional  
5 steps to expeditiously file any unfiled reports and correct any inaccurate report.<sup>5</sup> 72 Fed.  
6 Reg. at 31440.

7 As indicated in the Commission's policy statement, the "best efforts" defense  
8 addresses actions taken to avoid reporting errors and omissions and incomplete  
9 recordkeeping. In applying the defense, the Commission has required that more specific  
10 proactive efforts be undertaken by a committee prior to the occurrence of a filing lapse  
11 than has been demonstrated by the committee in this matter. While the Response speaks  
12 in detail of the Committee's prompt and corrective actions taken upon discovering the  
13 reporting failures, it is silent as to whether the Committee employed trained staff who  
14 took the relevant precautions in obtaining, maintaining, and submitting reporting  
15 information on its original monthly reports. In addition, the Committee makes no  
16 assertion that the reporting failures were the result of any unforeseen circumstances. As a  
17 result, the available information does not support the Committee's argument that it has  
18 met and exceeded the Commission's "best efforts" standards.

19 Therefore, the Commission concluded that the Committee has not satisfied the  
20 standards set forth by the Commission in its Best Efforts Policy Statement. The RAD

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<sup>5</sup> The Best Efforts Policy Statement also provides that the Commission will generally conclude that a committee has not met the best efforts standards if its reporting failure is a 1) result of the unavailability, inexperience, illness, negligence or error of committee staff, agents, etc.; 2) the failure of its computer system; 3) delays caused by committee vendors or contractors; 4) failure on the part of the Committee to know the recordkeeping and filing requirements of the Act; or 5) failure to use Commission-or-vendor provided software properly. *Id.*



Referral notes that the Committee failed to report and properly itemize newly incurred debts totaling \$9,232,930 on its original May-September 2010 monthly reports, respectively. Accordingly, the Committee has violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11(b) with respect to its failure to properly report and itemize the newly incurred debts on original May-September monthly reports.

**C. Conclusions**

Based on the foregoing, the Commission concluded that the Committee has not satisfied the standards set forth by the Commission in its Best Efforts Policy Statement. The Committee has not sufficiently demonstrated that it took the necessary proactive steps to prevent the occurrence of its filing lapses. The Committee failed to report and properly itemize newly incurred debts totaling \$9,232,930 on its original May-September 2010 monthly reports.

Accordingly, the Commission voted to open a Matter Under Review and find reason to believe that the Republican National Committee and Anthony W. Parker, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11(b) by failing to disclose and itemize all newly incurred debts on its original monthly reports for May-September 2010.